

1 Defendants PARTY CITY HOLDCO, INC. ("Party City") hereby answers
2 the Complaint of LUXOTTICA GROUP S.P.A. ("Luxottica"):

3 **PARTIES**

4 1. Defendant lacks knowledge or information sufficient to form a belief
5 as to the truth of the allegations in paragraph 1, and on that basis denies them.

6 2. Admit.

7 3. Denied.

8 **JURISDICTION AND VENUE**

9 4. Defendant admits the Complaint purports to allege claims under the
10 Lanham act and California law. Defendant denies plaintiff is entitled to any relief.

11 5. Defendant admits the Court has subject matter jurisdiction over this
12 action. Defendant denies the remainder of this paragraph.

13 6. Denied.

14 7. Denied.

15 **GENERAL ALLEGATIONS**

16 8. Defendant lacks knowledge or information sufficient to form a belief
17 as to the truth of the allegations in paragraph 8, and on that basis, denies them.

18 9. Defendant lacks knowledge or information sufficient to form a belief
19 as to the truth of the allegations in paragraph 9, and on that basis, denies them.

20 10. Denied.

21 11. Defendant lacks knowledge or information sufficient to form a belief
22 as to the truth of the allegations in paragraph 11, and on that basis denies them.

23 12. Defendant admits U.S. Trademark Registration No. 595,513 purports
24 to be registered with the U.S.P.T.O on September 21, 1954 in association with
25 sunglasses. Defendant admits Exhibit A speaks for itself.

1 13. Defendant admits selling goods using the word “wayfarer”.
2 Defendant denies plaintiff’s trademark is valid. Defendant denies it requires
3 plaintiff’s permission or consent to offer for sale, distribute, market, or sell any
4 goods and the remainder of this paragraph.

5 14. The Party City Defendants lack knowledge or information sufficient
6 to form a belief as to the truth of the allegations in paragraph 14, and on that basis
7 denies them. Defendant denies that its use of the term “wayfarer” is infringing.

8 15. Denied.

9 16. Denied.

10 17. Denied.

11 18. Denied.

12 19. Defendant denies it requires plaintiff’s authority to use or display any
13 trademark for any goods.

14 20. Denied.

15 21. Denied.

16 **FIRST CLAIM FOR RELIEF**

17 22. Defendant incorporates by this references all responses stated in
18 paragraphs 1-22.

19 23. Defendant admits the Complaint purports to allege a claim for
20 trademark infringement. Defendant denies plaintiff is entitled to any relief.

21 24. Denied.

22 25. Denied.

23 26. Denied.

24 27. Denied.

25 28. Denied.

26 29. Denied.

SECOND CLAIM FOR RELIEF

30. Defendant incorporates by this references all responses stated in paragraphs 1-22.

31. Defendant admits the Complaint purports to allege a claim for unfair competition and false designation of origin. Defendant denies plaintiff is entitled to any relief.

32. Denied.

33. Denied.

34. Denied.

35. Denied.

36. Denied.

THIRD CLAIM FOR RELIEF

37. Defendant incorporates by this references all responses stated in paragraphs 1-37.

38. Defendant admits the Complaint purports to allege a claim for federal trademark dilution. Defendant denies plaintiff is entitled to any relief.

39. Denied.

40. Denied.

41. Denied.

42. Denied.

43. Denied.

44. Denied.

45. Denied.

46. Denied.

FOURTH CLAIM FOR RELIEF

47. Defendant incorporates by this references all responses stated in paragraphs 1-47.

1 48. Defendant admits the Complaint purports to allege a claim for
2 California common law trademark infringement. Defendant denies plaintiff is
3 entitled to any relief.

4 49. Denied.

5 50. Denied.

6 51. Denied.

7 52. Denied.

8 **FIFTH CLAIM FOR RELIEF**

9 **(Unfair Competition—Cal. Bus. & Prof. Code § 17200, *et seq.*)**

10 53. Defendant incorporates by this references all responses stated in
11 paragraphs 1-53.

12 54. Defendant admits the Complaint purports to allege a claim for
13 California unfair competition. Defendant denies plaintiff is entitled to any relief.

14 55. Denied.

15 56. Denied.

16 57. Denied.

17 **AFFIRMATIVE DEFENSES**

18 **First Affirmative Defense: Invalidity**

19 1. Plaintiff's trademark and registration is invalid.

20 **Second Affirmative Defense: Estoppel and Laches**

21 2. Plaintiff's claims are barred, in whole or in part, by the doctrine of
22 laches, the doctrine of estoppel, and other equitable defenses. On information and
23 belief, defendant alleges plaintiff was aware of defendant's actions and failed to
24 take action.

25 **Third Affirmative Defense: Unclean Hands**

26 3. The purported claims alleged in the Complaint are barred, in whole
27 or in part, by the doctrine of unclean hands. Defendant alleges plaintiff's claim of
28

1 trademark rights is invalid and unenforceable and maintenance of plaintiff's
2 registration is inequitable.

3 **Fourth Affirmative Defense: Waiver/Acquiescence**

4 4. The purported claims alleged in the Complaint are barred, in whole
5 or in part, because plaintiff, by its acts, omissions and delay, and those of its
6 agents, waived or acquiesced to any claims or causes of action against defendant.

7 **Fifth Affirmative Defense: Standing**

8 5. Plaintiff lack standing to sue for trademark infringement and related
9 claims. Defendant alleges that plaintiff is not a valid assignee of any purported
10 trademark rights.

11 **Sixth Affirmative Defense: Fair Use**

12 6. The alleged infringement of plaintiff's purported rights, if any, is
13 protected by the fair use doctrine.

14 **Seventh Affirmative Defense: Lawful Competition**

15 7. Plaintiff's claims fail, in whole or in part, because the alleged conduct
16 concerns lawful competition that was privileged and/or justified.

17 **Eighth Affirmative Defense: Statute of Limitation**

18 8. Plaintiff's claims and/or damages are barred, in whole or part, by the
19 applicable statutes of limitation.

20 **Reservation of Additional Defenses**

21 Defendant reserves all affirmative defenses available under Rule 8(c) and
22 Rule 12 of the Federal Rules of Civil Procedure, and any other defenses, at law or in
23 equity, that may be available now or may become available in the future based on
24 discovery or any other factual investigation in this case, or that may be asserted by
25 plaintiff.

PRAYER FOR RELIEF

WHEREFORE, defendant requests entry of judgment in its favor and against plaintiff as follows:

- a. Denying all relief sought by plaintiff in the Complaint;
- b. Declaring the action to be exceptional and awarding defendant its attorneys' fees pursuant to 15 U.S.C. §1117 or other related law;
- c. Declaring all plaintiff's trademarks invalid and unenforceable; and
- d. such other relief as the Court deems just and appropriate.

Dated: January 6, 2016

MANDOUR & ASSOCIATES, APC

/s/ Ben T. Lila

Ben T. Lila (SBN 246808)

Email: blila@mandourlaw.com

Attorneys for Defendant,

PARTY CITY HOLDCO, INC.

JURY DEMAND

Defendant demands a trial by jury of all issues so triable.

Dated: January 13, 2016

MANDOUR & ASSOCIATES, APC

s/ Ben T. Lila

Ben T. Lila
Attorneys for Defendant,
PARTY CITY HOLDCO, INC.

CERTIFICATE OF SERVICE

I hereby certify that on the below date, I filed the foregoing document via the Court's CM/ECF Filing System, which will serve electronic notice of the same on the following:

Dated: January 13, 2016

/s Ben T. Lila

Ben T. Lila

Email: blila@mandourlaw.com